Supreme Court of the United States

OCTOBER TERM, 1969

No. 1517

EUGENE GRIFFIN, ETC., ET AL.,
Petitioners,

—v.—

LAVON BRECKENRIDGE, ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

INDEX

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

Civil Docket No. 1417

EUGENE GRIFFIN, a minor, by his next friend and father, ROOSEVELT GRIFFIN; RENEA JOHNSON, a minor, by his next friend and mother, WILLIE MAE JOHNSON; LONNIE CHAMBERLIN, a minor, by his next friend and mother, MARY CHAMBERLIN; and TED COLEMAN

v.

LAVON BRECKENRIDGE and JAMES CALVIN BRECKENRIDGE

Basis of Action: CIVIL RIGHTS, 28 U.S.C. Secs. 1331 and 1343—Assault and Battery Suit for $640,000.00

Jury Trial Claimed by Defendants on 9-18-67

For Plaintiff:

MARION WRIGHT, 538½ No. Farish St., Jackson, Miss. 39202

L. LACKEY ROWE, JR., DENNISON RAY, JONATHAN SHAPIRO, ELLIOTT C. LICHTMAN, 233 No. Farish St., Jackson, Miss. 39201

For Defendant:

HELEN J. McDADE, DeKalb, Miss., Box 112 39328

DOCKET ENTRIES

Date	Plaintiff's Account	Received	Disbursed
6-30-67	Marion Wright	15.00	
7- 6-67	C/d 1-4		15.00
1-17-68	Dennison Ray No. 50723 Notice of Appeal	5.00	

DOCKET ENTRIES

Date	
	J.S. 5 card
6-30-67	Complaint, original and three copies, filed
6-30-67	Summons issued; original and two copies, copies having attached thereto copy of complaint, mailed to U. S. Marshal
7-11-67	Summons returned executed as to both defendants, filed.
7-24-67	Defendants' Motion to Enlarge Time to Plead, with certificate of service—filed.
7-25-67	Copies of Rule for Requesting Jury Trial mailed to Marion Wright and Helen J. McDade
7-28-67	ORDER granting defendants until Sept. 18, 1967 in which to file their pleadings in this cause, filed and entered. O.B. 1967, Vol. II, page 389.
7-28-67	Copy of above Order mailed to Marion Wright and L. Lackey Rowe, Jr.
9-18-67	Answer of Defendants James Calvin Breckenridge and Lavon Breckenridge with certificate of service —filed.
9-18-67	Defendants' Motion to Dismiss, having attached thereto copy of Complaint filed in the Circuit Court of Kemper County, Miss., No. 1738, with certificate of service, and notice of hearing at Meridian, Miss. on the first Monday of the first session of court hereafter held at Meridian, Miss., by Honorable Dan M. Russell, Jr., filed.
9-18-67	Defendants' Motion to Dismiss with certificate of service and notice of motion at Meridian, Miss. on the first Monday of the first session of court hereafter held at Meridian, Miss. by Honorable Dan M. Russell, Jr., filed.

Date	
12- 4-67	OPINION OF THE COURT holding that the motion to dismiss for failure to state a cause of action is sustained. An order may be prepared accordingly, filed.
12- 4-67	Copies of above opinion mailed by Judge Russell to Mrs. Helen J. McDade and Mr. Dennison Ray.
12- 5-67	Motion of Marion E. Wright to Withdraw Appearance as Counsel of Record, having attached affidavits of Lonnie Chamberlin, by Mary Chamberlin, Willie Mae Johnson, Ted Coleman, Roosevelt Griffin, filed.
12- 5-67	Notice of Hearing of Motion to Withdraw Appearance as Counsel of Record at Meridian, Miss. at 9:00 A.M. on December 13, 1967, filed.
12-18-67	ORDER sustaining motion of the defendants to dismiss for failure to state a claim and dismissing cause with prejudice, with costs taxed against the plaintiffs, filed and entered. O.B. 1967, Vol. II, page 541. (Copies mailed to L. Lackey Rowe and Dennison Ray)
	J.S. 6 card
1-17-68	Notice of Appeal by Plaintiffs from order of the Court entered December 18, 1967, to United States Court of Appeals, with certificate of service, filed.
1-17-68	Bond for Costs on Appeal, filed. Check of Lawyer's Committee for Civil Right Under Law in amount of $250.00 mailed to Clerk, Jackson, Miss. for deposit into Registry.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

Civil Action No. 1417

[File Endorsement (Omitted in Printing)]

EUGENE GRIFFIN, a minor, by his next friend and father, ROOSEVELT GRIFFIN; RENEA JOHNSON, a minor, by his next friend and mother, WILLIE MAE JOHNSON; LONNIE CHAMBERLIN, a minor, by his next friend and mother, MARY CHAMBERLIN; and TED COLEMAN, PLAINTIFFS

—vs—

LAVON BRECKENRIDGE and JAMES CALVIN BRECKENRIDGE, DEFENDANTS

COMPLAINT—Filed June 30, 1967

1. The first cause of action arises under the Civil Rights Act of 1964, U.S.C., Title 42, Section 1985 as hereinafter more fully appears. The remaining causes of action are ancillary to the first cause of action. Each matter in controversy exceeds, exclusive of interest and costs, the sum of ten thousand dollars. The jurisdiction of this Court is invoked pursuant to U.S.C., Title 28, Sections 1331 and 1343.

2. The plaintiffs are Negro citizens of the United States and residents of Kemper County, Mississippi. Eugene Griffin, Renea Johnson, and Lonnie Chamberlin are minors and their respective parents sue on behalf of said minors and in their own right. Ted Coleman is an adult.

3. The defendants, Lavon Breckenridge and James Calvin Breckenridge, are white adult citizens of the United States residing in DeKalb, Kemper County, Mississippi.

4. On July 2, 1966, the minor plaintiffs and Ted Coleman were passengers in an automobile belonging to and operated by R. G. Grady of Memphis, Tennessee. They

were travelling upon the federal, state and local highways in and about DeKalb, Mississippi, performing various errands and visiting friends.

5. On July 2, 1966 defendants, acting under a mistaken belief that R. G. Grady was a worker for Civil Rights for Negroes, wilfully and maliciously conspired, planned, and agreed to block the passage of said plaintiffs in said automobile upon the public highways, to stop and detain them and to assault, beat and injure them with deadly weapons. Their purpose was to prevent said plaintiffs and other Negro-Americans, through such force, violence and intimidation, from seeking the equal protection of the laws and from enjoying the equal rights, privileges and immunities of citizens under the laws of the United States and the State of Mississippi, including but not limited to their rights to freedom of speech, movement, association and assembly; their right to petition their government for redress of their grievances; their rights to be secure in their persons and their homes; and their rights not to be enslaved nor deprived of life and liberty other than by due process of law.

6. Pursuant to their conspiracy, defendants drove their truck into the path of Grady's automobile and blocked its passage over the public road. Both defendants then forced Grady and said plaintiffs to get out of Grady's automobile and prevented said plaintiffs from escaping while defendant James Calvin Breckenridge clubbed Grady with a blackjack, pipe or other kind of club by pointing firearms at said plaintiffs and uttering threats to kill and injure them if defendants' orders were not obeyed, thereby terrorizing them to the utmost degree and depriving them of their liberty.

7. Pursuant to their conspiracy, defendants wilfully, intentionally, and maliciously menaced and assaulted each of the said plaintiffs by pointing firearms and wielding deadly blackjacks, pipes or other kind of clubs, while uttering threats to kill and injure said plaintiffs, causing them to become stricken with fear of immediate injury and death and to suffer extreme terror, mental anguish and emotional and physical distress.

8. Pursuant to defendants' conspiracy, defendant James Calvin Breckenridge then wilfully, intentionally

and maliciously clubbed each of said plaintiffs on and about the head, severely injuring all of them, while both defendants continued to assault said plaintiffs and prevent their escape by pointing their firearms at them.

9. As a direct result of the clubbing and beating and the injuries resulting therefrom, each of said plaintiffs was terrorized and suffered extreme fear for the safety and well-being of himself and his family, anxiety, depression, humiliation and other mental anguish and emotional distress, some of which continues until the present time and will continue for an indefinite period in the future.

10. Defendants wilfully and maliciously intended to inflict, and by their conspiracy and acts pursuant thereto, did inflict upon plaintiff parents mental suffering, terror, fright and fear for the safety and well-being of the minor plaintiffs, the rest of their families and themselves, which continues until the present time and will continue in the future.

FIRST CAUSE OF ACTION

11. Paragraphs 1 through 10, inclusive, of this Complaint are incorporated herein by reference.

12. By their conspiracy and acts pursuant thereto, the defendants have wilfully and maliciously, directly and indirectly, intimidated and prevented the minor plaintiffs and their parents, plaintiff Ted Coleman and other Negro-Americans from enjoying and exercising their rights, privileges and immunities as citizens of the United States and the State of Mississippi, including but not limited to, their rights to freedom of speech, movement, association and assembly; the right to petition their government for redress of grievances; their right to be secure in their person; their right not to be enslaved nor deprived of life, liberty or property other than by due process of law, and their rights to travel the public highways without restraint in the same terms as white citizens in Kemper County, Mississippi, for which plaintiffs seek damages pursuant to the Civil Rights Act of 1964, Section 1985 of Title 42 of the United States Code.

WHEREFORE, each plaintiff demands judgment against the defendants, jointly and severally, for compensatory damages in the amount of $10,000 and punitive damages in the amount of $15,000.

SECOND CAUSE OF ACTION

13. Paragraphs 2 through 6, inclusive, of this Complaint are incorporated herein by reference.

14. By reason of defendants' malicious and false imprisonment and detention of said plaintiffs upon the public highway, each of them suffered extreme terror, mental anguish and severe emotional distress.

WHEREFORE, each of said plaintiffs demands judgment against the defendants, jointly and severally, for compensatory damages in the amount of $5,000 and punitive damages in the amount of $10,000.

THIRD CAUSE OF ACTION

15. Paragraphs 2 through 7, inclusive, of this Complaint are incorporated herein by reference.

WHEREFORE, each of said plaintiffs demands judgment against the defendants, jointly and severally, for compensatory damages in the amount of $10,000 and punitive damages in the amount of $20,000.

FOURTH CAUSE OF ACTION

16. Paragraphs 2 through 9, inclusive, of this Complaint are incorporated herein by reference.

17. As a direct result of the clubbing and beating of said plaintiffs, each of them sustained a severe concussion and injuries to the brain, head, and adjacent parts of his body, severe lacerations, contusions and abrasions of the scalp resulting in permanent scars, and various residual physical effects from these injuries. These injuries were accompanied by great pain and suffering which some of said plaintiffs still suffer, with some diminution, at the present time and which they will continue to suffer for an indefinite period in the future.

18. As a direct result of his injuries Ted Coleman, plaintiff, has incurred and will incur in the future, various medical expenses and losses of earnings and earning power.

WHEREFORE, each of said plaintiffs demands judgment against the defendants, jointly and severally, for compensatory damages in the amount of $25,000 and punitive damages in the amount of $50,000.

FIFTH CAUSE OF ACTION

19. Paragraphs 2 through 17, inclusive, of this Complaint are incorporated herein by reference.

20. As a direct result of injuries and ailments suffered by the minor plaintiffs caused by the acts of the defendants pursuant to their conspiracy, the plaintiff parents of the minor plaintiffs have incurred and will incur in the future various medical expenses and other expenses for the care and treatment of their said minor children.

21. As a direct result of the injuries, ailments and disability suffered by the minor plaintiffs, the plaintiff parents have lost the services and the earnings of their minor children and some will sustain such losses in the future.

WHEREFORE, each of said plaintiff parents demands judgment against the defendants, jointly and severally, for compensatory damages in the amount of $5,000 and punitive damages in the amount of $10,000.

/s/ Marian Wright
538½ North Farish Street
Jackson, Mississippi

L. Lackey Rowe, Jr.
Denison Ray
Jonathan Shapiro
Elliott C. Lichtman
233 North Farish Street
Jackson, Mississippi

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

Civil Action No. 1417

[File Endorsement (Omitted in Printing)]

EUGENE GRIFFIN, a minor, by his next friend and father, ROOSEVELT GRIFFIN; RENEA JOHNSON, a minor, by his next friend and mother, WILLIE MAE JOHNSON; LONNIE CHAMBERLIN, a minor, by his next friend and mother, MARY CHAMBERLIN; and TED COLEMAN, PLAINTIFFS

—vs—

LAVON BRECKENRIDGE and JAMES CALVIN BRECKENRIDGE, DEFENDANTS

ANSWER OF DEFENDANTS—Filed September 18, 1967

Now come James Calvin Breckenridge and Lavon Breckenridge, Defendants in the above styled and numbered cause and file this their answer to the Complaint filed against them herein, and answer so much and such parts as they are advised and believe it is necessary to make answer, and answering, say as follows, to-wit:

1. They deny the first cause of action arises under the Civil Rights Act of 1964, U.S.C., Title 42, Section 1985; and they deny that the remaining causes of action are ancillary to the first cause of action.

2. They deny that each matter in controversy exceeds, exclusive of interest and costs, the sum of ten thousand dollars.

3. They deny the jurisdiction of this court is invoked pursuant to U.S.C., Title 28, Sections 1331 and 1343.

4. They admit that the plaintiffs, Eugene Griffin, Renea Johnson, Lonnie Chamberlin, and Ted Coleman, are Negro citizens of the United States and residents of

Kemper County, Mississippi; and that plaintiffs, Eugene Griffin, Renea Johnson, and Lonnie Chamberlain are minors and their respective parents sue on behalf of said minors and in their own right; and they admit Ted Coleman is an adult.

5. Defendants admit that they are white adult citizens of the United States residing in DeKalb, Kemper County, Mississippi.

6. They deny on July 2, 1966, the minor plaintiffs and Ted Coleman were traveling as passengers in an automobile belonging to and operated by R. G. Grady of Memphis, Tennesse[illegible] on the federal, state and local highways in and about DeKalb, Mississippi, performing various errands and visiting friends.

7. They deny on July 2, 1966, that they, acting under the mistaken belief that R. G. Grady was a worker for Civil Rights for Negroes, wilfully and maliciously conspired, planned, and agreed to block the passage of said plaintiffs in said automobile upon the public highways, to stop and detain them and to assault, beat and injure them with deadly weapons. Defendants deny their purpose was to prevent the plaintiffs and other Negro-Americans, through force, violence and intimidation, from seeking the equal protection of the laws and from enjoying the equal rights, privileges and immunities of citizens under the laws of the United States and the State of Mississippi, including but not limited to their rights to freedom of speech, movement, association and assembly; their right to petition their government for redress of their grievances; their rights to be secure in their persons and their homes; and their rights not to be enslaved nor deprived of life and liberty other than by due process of law; and Defendants state the truth to be that the only violence committed by either of the Defendants was in self-defense and justifiable.

8. Defendants deny that pursuant to their conspiracy, they drove their truck into the path of Grady's automobile and blocked its passage over the public road. Defendants deny that they forced Grady and the plaintiffs to get out of Grady's automobile and prevented said plaintiffs from escaping while Defendant James Calvin

Breckenridge clubbed Grady with a blackjack, pipe, or other kind of club by pointing firearms at said plaintiffs and uttering threats to kill and injure them if defendants' orders were not obeyed, thereby terrorizing them to the utmost degree and depriving them of their liberty.

9. Defendants deny that pursuant to their conspiracy, Defendants wilfully, intentionally, and maliciously menaced and assaulted each of the said plaintiffs by pointing firearms and wielding deadly blackjacks, pipes or other kind of clubs, while uttering threats to kill and injure said plaintiffs, causing them to become stricken with fear of immediate injury and death and to suffer extreme terror, mental anguish and emotional and physical distress; and Defendants again state the truth to be that the only violence committed by either of the Defendants was in self-defense and justifiable.

10. Defendants deny that pursuant to Defendants' conspiracy, Defendant, James Calvin Breckenridge then wilfully, intentionally and maliciously clubbed each of said plaintiffs on and about the head, severely injuring all of them, while both Defendants continued to assault said plaintiffs and prevent their escape by pointing their firearms at them.

11. Defendants deny that as a direct result of the clubbing and beating and the injuries resulting therefrom, each of said plaintiffs was terriorized and suffered extreme fear for the safety and well-being of himself and his family, anxiety, depression, humiliation and other mental anguish and emotional distress, some of which continues unto the present time and will continue for an indefinite period in the future.

12. Defendants deny that they wilfully and maliciously intended to inflict, and by their conspiracy and acts pursuant thereto, did inflict upon plaintiff parents mental suffering, terror, fright and fear for the safety and well-being of the minor plaintiffs, the rest of their families and themselves, which continues until the present time and will continue in the future.

13. Defendants deny that by their conspiracy and acts pursuant thereto, that they have wilfully and maliciously, directly and indirectly, intimidated and prevented the

minor plaintiffs and their parents, plaintiff Ted Coleman and other Negro-Americans from enjoying and exercising their rights, privileges and immunities as citizens of the United States and the State of Mississippi, including but not limited to, their rights to freedom of speech, movement, association and assembly; the right to petition their government for redress of grievances; their right to be secure in their person; their right not to be enslaved nor deprived of life, liberty or property other than by due process of law, and their rights to travel the public highways without restraint in the same terms as white citizens in Kemper County, Mississippi, for which plaintiffs seek damages pursuant to the Civil Rights Act of 1964, Section 1985 of Title 42 of the United States Code; and Defendants state the truth to be that neither of the Defendants is an officer of law, neither was acting under the color as law officers, and neither of the Defendants committed any conspiracy or any acts pursuant thereto.

14. They deny the allegations in Paragraphs 13 and 14 for a second cause of action.

15. They deny the allegations in Paragraph 15 for a third cause of action.

16. They deny as a direct result of the clubbing and beating of said plaintiffs, that each of them sustained a severe concussion and injuries to the brain, head, and adjacent parts of his body, severe lacerations, contusions and abrasions of the scalp resulting in permanent scars, and various residual physical effects from these injuries, and Defendants deny these injuries were accompanied by great paid and suffering which some of said plaintiffs still suffer, with some diminution, at the present time and which they will continue to suffer for an indefinite period in the future. Defendants have no personal knowledge of any paid and suffering which the plaintiffs may have been caused to endure and deny that the plaintiffs, by reason of Defendants' act and conduct, will continue to suffer for an indefinite period in the future.

17. Defendants deny as a result of his injuries, Ted Coleman, plaintiff, has incurred and will incur in the

future, various medical expenses and loss of earnings and earning power.

18. Defendants deny the allegations in Paragraphs 16, 17, and 18 for a fourth cause of action.

19. Defendants deny as a direct result of injuries and ailments suffered by the minor plaintiffs caused by the acts of the defendants pursuant to their conspiracy, the plaintiff parents of the minor plaintiffs have incurred and will incur in the future various medical expenses and other expenses for the care and treatment of their said minor children.

20. Defendants deny that as a result of the injuries, ailments and disability suffered by the minor plaintiffs, the plaintiff parents have lost the services and the earnings of their minor children and some will sustain such losses in the future.

21. Defendants deny the allegations in Paragraphs 19, 20, and 21 for a fifth cause of action.

22. Defendants deny that the plaintiffs, or either of them, should recover any amount whatsoever from the Defendants, or either of them; on either or any of the alleged causes of action herein; and the Defendants respectively request a jury to try this cause.

/s/ W. D. Moore
and

/s/ Helen J. McDade
Attorneys for Defendants

Defendants Request Trial by Jury.

[Certificate of Service (Omitted in Printing)]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

No. 1417

[File Endorsement (Omitted in Printing)]

EUGENE GRIFFIN, a minor, by his next friend and father, ROOSEVELT GRIFFIN; RENEA JOHNSON, a minor, by his next friend and mother, WILLIE MAE JOHNSON; LONNIE CHAMBERLIN, a minor, by his next friend and mother, MARY CHAMBERLIN; and TED COLEMAN, PLAINTIFFS

—vs—

LAVON BRECKENRIDGE and JAMES CALVIN BRECKENRIDGE, DEFENDANTS

MOTION TO DISMISS—Filed September 18, 1967

Come now the Defendants in the above styled and numbered cause by and through their attorneys of record and moves the court to dismiss this cause of action for the following reasons, to-wit:

That the Plaintiffs in this cause have heretofore filed their cause of action in the Circuit Court of Kemper County, Mississippi, which said cause of action involves the same identical parties as is involved in this cause, and involves the same identical allegations of complaint as is involved in this cause, and plaintiffs sue for the same damages for the same alleged acts, and that the said Circuit Court of Kemper County, Mississippi, has taken jurisdiction of said cause, and that the same is now pending in said Court; that this cause of action is a duplicity of suits, and that this court is not vested with the jurisdiction of the subject matter and the parties in this cause; that a certified copy of the Declaration filed in the Circuit Court of Kemper County, Mississippi,

is attached hereto and made a part hereof just as if fully copied herein, and marked as Exhibit "A" hereto.

Respectfully submitted.

/s/ Helen J. McDade
and

/s/ W. D. Moore
Attorneys for Defendants

[Certificate of Service (Omitted in Printing)]

Notice is hereby given to all of said attorneys that the above and foregoing Motion to Dismiss will be called up in the Eastern Division of the Southern District of Mississippi at Meridian, Miss., on the first Monday of the first session of Court hereafter held in Meridian, Mississippi by Hon. Dan M. Russell, Jr.

Witness my signature, this the 18th day of September, 1967.

/s/ Helen J. McDade
HELEN J. MCDADE

and

/s/ W. D. Moore
W. D. MOORE

Attorneys for Defendants

EXHIBIT A TO MOTION TO DISMISS

IN THE CIRCUIT COURT
OF KEMPER COUNTY, MISSISSIPPI

No. 1738

EUGENE GRIFFIN, a minor, by his next friend and father, ROOSEVELT GRIFFIN; RENEA JOHNSON, a minor, by his next friend and mother, WILLIE MAE JOHNSON; LONNIE CHAMBERLIN, a minor, by his next friend and mother, MARY CHAMBERLIN; and TED COLEMAN, PLAINTIFFS

—vs—

LAVON BRECKENRIDGE and JAMES CALVIN BRECKENRIDGE, DEFENDANTS

DECLARATION

The plaintiffs bring the following causes of action against the defendants and complain as follows:

1. The plaintiffs are Negro citizens of the United States and residents of Kemper County, Mississippi. Eugene Griffin, Renea Johnson, and Lonnie Chamberlin are minors and their respective parents sue on behalf of said minors and in their own right. Ted Coleman is an adult.

2. The defendants, Lavon Breckenridge and James Calvin Breckenridge, are white adult citizens of the United States residing in DeKalb, Kemper County, Mississippi.

3. On July 2, 1966, the minor plaintiffs and Ted Coleman were passengers in an automobile belonging to and operated by R. G. Grady of Memphis, Tennessee. They were travelling upon the federal, state and local highways in and about DeKalb, Mississippi, performing various errands and visiting friends.

4. On July 2, 1966 defendants, acting under a mistaken belief that R. G. Grady was a worker for Civil Rights for Negroes, wilfully and maliciously conspired,

planned, and agreed to block the passage of said plaintiffs in said automobile upon the public highways, to stop and detain them and to assault, beat and injure them with deadly weapons.

FIRST CAUSE OF ACTION

5. Pursuant to their conspiracy, defendants drove their truck into the path of Grady's automobile and blocked its passage over the public road. Both defendants then forced Grady and said plaintiffs to get out of Grady's automobile and prevented said plaintiffs from escaping while defendant James Calvin Breckenridge clubbed Grady with a blackjack, pipe or other kind of club by pointing firearms at said plaintiffs and uttering threats to kill and injure them if defendants' orders were not obeyed, thereby terrorizing them to the utmost degree and depriving them of their liberty.

6. By reason of defendants' malicious and false imprisonment and detention of said plaintiffs, each of them suffered extreme terror, mental anguish and severe emotional distress.

WHEREFORE, each of said plaintiffs demands judgment against the defendants, jointly and severally, for compensatory damages in the amount of $5,000 and punitive damages in the amount of $10,000.

SECOND CAUSE OF ACTION

7. Paragraphs 1 through 6, inclusive, of this Declaration are herein by reference.

8. Pursuant to their conspiracy, defendants wilfully, intentionally, and maliciously menaced and assaulted each of the said plaintiffs by pointing firearms and wielding deadly blackjacks, pipes or other kind of clubs, while uttering threats to kill and injure said plaintiffs, causing them to become stricken with fear of immediate injury and death and to suffer extreme terror, mental anguish and emotional and physical distress.

WHEREFORE, each of said plaintiffs demands judgment against the defendants, jointly and severally, for

compensatory damages in the amount of $10,000 and punitive damages in the amount of $20,000.

THIRD CAUSE OF ACTION

9. Paragraphs 1 through 8, inclusive, of this Declaration are incorporated herein by reference.

10. Pursuant to defendants' conspiracy, defendant James Calvin Breckenridge then wilfully, intentionally and maliciously clubbed each of said plaintiffs on and about the head, severely injuring all of them, while both defendants continued to assault said plaintiffs and prevent their escape by pointing their firearms at them.

11. As a direct result of the clubbing and beating of said plaintiffs, each of them sustained a severe concussion and injuries to the brain, head, and adjacent parts of his body, severe lacerations, contusions and abrasions of the scalp resulting in permanent scars, and various residual physical effects from these injuries. These injuries were accompanied by great pain and suffering which some of said plaintiffs still suffer, with some diminution, at the present time and which they will continue to suffer for an indefinite period in the future.

12. As a direct result of the clubbing and beating and the injuries resulting therefrom, each of said plaintiffs was terrorized and suffered extreme fear for the safety and well-being of himself and his family, anxiety, depression, humiliation and other mental anguish and emotional distress, some of which continues until the present time and will continue for an indefinite period in the future.

13. As a direct result of his injuries Ted Coleman, plaintiff, has incurred and will incur in the future, various medical expenses and losses of earnings and earning power.

WHEREFORE, each of said plaintiffs demands judgment against the defendants, jointly and severally, for compensatory damages in the amount of $25,000 and punitive damages in the amount of $50,000.

FOURTH CAUSE OF ACTION

14. Paragraphs 1 through 12, inclusive, of this Declaration are incorporated herein by reference.

15. As a direct result of injuries and ailments suffered by the minor plaintiffs caused by the acts of the defendants pursuant to their conspiracy, the plaintiff parents of the minor plaintiffs have incurred and will incur in the future various medical expenses and other expenses for the care and treatment of their said minor children.

16. As a direct result of the injuries, ailments and disability suffered by the minor plaintiffs, the plaintiff parents have lost the services and the earnings of their minor children and some will sustain such losses in the future.

17. Defendants wilfully and maliciously intended to inflict, and by their conspiracy and acts pursuant thereto, did inflict upon plaintiff parents mental suffering, terror, fright and fear for the safety and well-being of the minor plaintiffs, the rest of their families and themselves, which continues until the present time and will continue in the future.

WHEREFORE , each of said plaintiff parents demands judgment against the defendants, jointly and severally, for compensatory damages in the amount of $5,000 and punitive damages in the amount of $10,000.

/s/ Marian Wright
MARIAN WRIGHT
538½ North Farish Street
Jackson, Mississippi

L. LACKEY ROWE, JR.
DENISON RAY
JONATHAN SHAPIRO
ELLIOTT C. LICHTMAN
233 North Farish Street
Jackson, Mississippi

Attorneys for Plaintiffs

Filed in this Office, Jun. 30, 1967, /s/ J. G. Palmer, Circuit Clerk, Kemper County, Miss.

I, James G. Palmer, clerk of the Circuit Court of Kemper County, Mississippi, do hereby certify that this is a photostatic copy of the original declaration of this case on file in the Circuit Clerks office in Kemper County.

This the 13th day of September, 1967.

/s/ James G. Palmer
JAMES G. PALMER
Circuit Clerk

[SEAL]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

Civil Action No. 1417

[File Endorsement (Omitted in Printing)]

EUGENE GRIFFIN, a minor, by his next friend and father, ROOSEVELT GRIFFIN; RENEA JOHNSON, a minor, by his next friend and mother, WILLIE MAE JOHNSON; LONNIE CHAMBERLIN, a minor, by his next friend and mother, MARY CHAMBERLIN; and TED COLEMAN, PLAINTIFFS

—*vs*—

LAVON BRECKENRIDGE and JAMES CALVIN BRECKENRIDGE, DEFENDANTS

MOTION TO DISMISS—Filed September 18, 1967

Comes now the Defendants in the above styled and numbered cause by and through their attorneys of record and moves this court to dismiss this cause of action for the following reasons, to-wit:

That this court is not vested with jurisdiction of this cause for the reasons that if the allegations of the Complaint were accepted as true, the same would not come within the purview of the Civil Rights Act of 1964, U.S.C., Title 42, Section 1985, and Title 28, Sections 1331 and 1343 thereof, and that there are no other allegations in the Complaint that would vest jurisdiction of this cause in this court.

Respectfully submitted.

/s/ Helen J. McDade

/s/ W. D. Moore
Attorneys for Defendants

[Certificate of Service (Omitted in Printing)]

Notice is hereby given to all of said attorneys that the above and foregoing Motion to Dismiss will be called up in the Eastern Division of the Southern District of Mississippi at Meridian, Miss., on the first Monday of the first session of Court hereafter held in Meridian, Mississippi by Hon. Dan M. Russell, Jr.

Witness my signature, this the 18th day of September, 1967.

/s/ Helen J. McDade
HELEN J. MCDADE

/s/ W. D. Moore
W. D. MOORE

Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

Civil Action No. 1417

[File Endorsement (Omitted in Printing)]

EUGENE GRIFFIN, a minor, by his next friend and father, ROOSEVELT GRIFFIN, ET AL., PLAINTIFFS

versus

LAVON BRECKENRIDGE, ET AL., DEFENDANTS

OPINION SUSTAINING MOTION TO DISMISS—
December 1, 1967

This cause is before the Court on defendants' two motions to dismiss, one on the grounds that the federal suit is duplicitous in that the identical cause of action has been filed in a state court, and the second motion on the ground that the allegations do not state a cause of action under Section 1985, Title 42 U.S.C.

Plaintiffs cite *U. S.* v. *Guest*, 383 U. S. 745 as authority for the cause of action. However, this case, as well as *U. S.* v. *Price*, 383 U. S. 787, issued the same day, are based on criminal statutes, not civil, and the Court in each was careful to point out that the issues therein were of statutory construction, not of constitutional power. Accordingly, I do not find them applicable to the present cause. Also in both of those cases the Court found that the indictments charged conspiratorial offenses under "color of law."

Collins v. *Hardyman*, 341 U. S. 651, also cited by plaintiffs, is far more applicable to the instant action. The civil conspiracy charged in *Collins* is that defendants, private individuals, entered into an agreement to deprive plaintiffs of certain rights guaranteed to all. In order to avoid adverse decisions in earlier Fourteenth Amendment cases, the Fourteenth Amendment was not mentioned. Nor did the complaint charge a conspiracy

under color of state law. The Court held this fatal, saying that the complaint was nothing more than an invasion of private rights by private individuals, and that such rights *under the law* and to *protection of the laws* remained equal to the rights of every one else. The Court said: "The facts alleged fall short of a conspiracy to alter, impair or deny equality of rights under the law, though they do show a lawless invasion of rights for which there are remedies in the law of California." *Collins* v. *Hardyman*, supra, p. 662. Also see *Wallach* v. *Cannon*, 357 F. 2d 557; and *Kamsler* v. *M. F. I. Corporation*, 359 F. 2d 752. Particularly applicable is *Bryant* v. *Donnell*, 239 F. Supp. 681, 687, 688, citing from *Collins* v. *Hardyman*, supra.

The motion to dismiss for failure to state a cause of action is sustained.

An order may be prepared accordingly.

/s/ Dan M. Russell, Jr.
United States District Judge

DATED: Dec. 1, 1967

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

Civil Action No. 1417

[File Endorsement (Omitted in Printing)]

EUGENE GRIFFIN, a minor, by his next friend and father, ROOSEVELT GRIFFIN, ET AL., PLAINTIFFS

versus

LAVON BRECKENRIDGE, ET AL., DEFENDANTS

ORDER OF DISMISSAL—December 14, 1967

This cause came on to be heard on motion to dismiss filed by the Defendants in this cause for the reason that the allegations of the complaint do not state a cause of action under Section 1985, Title 42 U.S.C.; and the court after hearing and considering the said motion, the arguments and briefs of both of the parties hereto, the court finds and so adjudges that the Complaint filed in this cause should be dismissed with prejudice for failure to state a cause of action, and as more specifically set forth in the opinion of the court sustaining Defendants' motion to dismiss, dated December 1, 1967, and which is filed among the papers in this cause.

IT IS, THEREFORE, ordered that the motion filed by the Defendants to dismiss this cause of action for failure to state a cause of action be and the same is hereby sustained and this cause of action be and the same is hereby dismissed with prejudice, and the costs accruing in this cause be and the same are hereby taxed against the Plaintiffs.

ORDERED this the 14th day of December, 1967.

/s/ Dan M. Russell, Jr.
United States District Judge

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

Civil Action No. 1417

[File Endorsement (Omitted in Printing)]

EUGENE GRIFFIN, a minor, by his next friend and father, ROOSEVELT GRIFFIN, ET AL., PLAINTIFFS

—*vs*—

LAVON BRECKENRIDGE, ET AL., DEFENDANTS

NOTICE OF APPEAL—Filed January 17, 1968

Notice is hereby given that plaintiffs hereby appeal to the United States Court of Appeals for the Fifth Circuit from the December 14, 1967 order of the Court, entered December 18, 1967, dismissing this cause with prejudice for failure to state a cause of action.

Dated: January 17, 1968

/s/ L. Rowe, Jr.
L. LACKEY ROWE, JR.

/s/ Denison Ray
DENISON RAY
233 North Farish Street
Jackson, Mississippi 39201

[Certificate of Service (Omitted in Printing)]

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 25799

EUGENE GRIFFIN, a minor, by his next friend and father, ROOSEVELT GRIFFIN, ET AL., APPELLANTS

versus

LAVON BRECKENRIDGE, ET AL., APPELLEES

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

OPINION—April 29, 1969

Before GOLDBERG and AINSWORTH, Circuit Judges, and SPEARS, District Judge

GOLDBERG, Circuit Judge: This civil rights case, ruled by the majority opinion in *Collins* v. *Hardyman*,[1] involves a racially motivated assault committed upon a public highway. Adhering as we must to *Collins*, we affirm the district court's dismissal of appellants' complaint.

Plaintiffs, Negro citizens, brought this suit under the mantle of 42 U.S.C.A. § 1985 (3),[2] popularly known as

[1] 341 U.S. 651, 71 S.Ct. 937, 9 L.Ed. 1253 (1951).

[2] 42 U.S.C.A. § 1985:

* * * *

(3) If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the con-

the Ku Klux Klan Act. They alleged in their complaint a conspiracy between defendants Lavon Breckenridge and James Breckenridge to deprive them of their equal protection of the laws and their privileges and immunities under the laws. Specifically they charged that on July 2, 1966, defendants, both white adults, acting under the mistaken belief that R. G. Grady was a worker for the civil rights of Negroes, willfully and maliciously conspired, planned and agreed to block the passage of plaintiffs upon the public highway and to assault, beat and injure them with deadly weapons. It was further alleged that pursuant to this conspiracy defendants drove their truck into the path of Grady's automobile and blocked its passage over the public road. Both defendants then forced Grady and the other plaintiffs from their automobile and, holding them at gun point, began to club Grady with a black jack, pipe or other blunt instrument. During this period defendants repeatedly menaced plaintiffs with threats to kill or injure them, and eventually attacked all plaintiffs with clubs, while preventing escape or resistance with their firearms.

Based on these allegations, plaintiffs seek $10,000 compensatory and $5,000 punitive damages. They claim that as a result of defendants' conspiracy and their acts pursuant thereto, plaintiffs have been deprived of their

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stituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators. R.S. § 1980.

rights, privileges and immunities as citizens of the United States and as citizens of the State of Mississippi, including but not limited to their rights of freedom of speech, movement, association and assembly; their right to petition their government for redress of grievances; their right to be secure in their persons; their right not to be ensalved nor deprived of life, liberty or property other than by due process of law; and finally, their right to travel the public highways without restraint on the same terms as white citizens in Kemper County, Mississippi. The district court dismissed plaintiffs' complaint on the authority of *Collins* v. *Hardyman, supra*, for failure to state a cause of action. The district judge reasoned that the complaint alleged no more than an invasion of private rights by private individuals, and that *Collins* and numerous lower courts had limited § 1985 (3) to actions performed under "color of law." See *Hoffman* v. *Halden*, 9 Cir. 1969, 268 F.2d 280, 291; *Wallach* v. *Cannon*, 8 Cir. 1966, 357 F.2d 557; *Haldane* v. *Chagnon*, 9 Cir. 1965, 345 F.2d 601; *Bryant* v. *Donnell*, W.D. Tenn. 1965, 239 F. Supp. 681; *Van Daele* v. *Vinci*, N.D. Ill. 1968, 294 F.Supp. 71; *Huey* v. *Barloga*, N.D. Ill. 1967, 277 F.Supp. 864; *Swift* v. *Fourth National Bank of Columbus, Georgia*, M.D. Ga. 1962, 205 F.Supp. 563.

On this appeal, plaintiffs forcefully urge that *United States* v. *Guest*,[3] and *Jones* v. *Alfred H. Mayer Co.*,[4] have lifted the state action limitation from § 1985 (3) so that the literal words of that statute[5] (which do not include the words "under color of law") may now be given their unfettered application.

The state action limitation on the various Civil Rights Acts[6] enacted during the Reconstruction Era are trace-

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[3] 383 U.S. 745, 86 S.Ct. 1170, 16 L.Ed.2d 139 (1966).

[4] 392 U.S. 409, 88 S.Ct. ——, 20 L.Ed.2d 1189 (1968).

[5] See footnote 2.

[6] Civil Rights Act of 1866, 14 Stat. 27 (1866), now, Rev. Stat. § 1978, 42 U.S.C.A. § 1982 (1964); the Enforcement Act, 16 Stat. 140 (1870); the amendments to the Enforcement Act, 16 Stat. 433 (1871); Civil Rights Act of April 20, 1871, 17 Stat. 13 (1871), now, Rev. Stat. § 1980, 42 U.S.C.A. § 1985; Civil Rights Act of March 1, 1875, 18 Stat. 335 (1875).

able to the *Civil Rights Cases*, 1883, 109 U.S. 3, 3 S.Ct. 18, 27 L.Ed. 835, in which the public accommodation sections of the Civil Rights Act of 1875 were questioned. Out of those cases, and of course out of the language of the Fourteenth Amendment itself,[7] has grown a long and complicated history in which the state action requirement has undergone considerable expansion [8] and some redefinition, but always with the result that the Fourteenth Amendment and rights flowing from it have been vouchsafed only where there has been interference by state authority, or by those acting under "color" of state authority. *United States* v. *Price*, 1966, 383 U.S. 787, 86 S.Ct. 1152, 16 L.Ed.2d 267. As said by one court, "this distinction between purely private discrimination and discrimination pursuant to 'state action' has persisted for over eighty years. Only discrimination which falls within the latter category warrants Fourteenth Amendment protection and falls within the ambit of the Civil Rights Act." (Section 1985 (3)). *Huey* v. *Barloga*, *supra*, at 869. In the words of the Supreme Court in *United States* v. *Cruikshank*, 1876, 92 U.S. 542, 23 L.Ed. 588:

> "The Fourteenth Amendment prohibits a State from denying to any person within its jurisdiction the equal protection of the laws; but this provision does not add anything to the rights which one citizen has under the Constitution against another. The

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[7] Amendment. XIV. [1868]

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

* * * *

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

[8] See *Note, Fourteenth Amendment Congressional Power to Legislate Against Private Discriminations: The Guest Case*, 52 Cornell L.Q. 586, 591-599.

> equality of the rights of citizens is a principle of republicanism. Every republican government is in duty bound to protect all its citizens in the enjoyment of this principle, if within its power. That duty was originally assumed by the States; and it still remains there. The only obligation resting upon the United States is to see that the States do not deny the right. This the Amendment guaranties [sic], but no more." 92 U.S. at 555.

See also *United States* v. *Guest*, 383 U.S. 745, 755, and *Wilkins* v. *United States*, 5 Cir. 1967, 376 F.2d 552, 560, *cert. denied*, 389 U.S. 964, 88 S.Ct. 342, 19 L.Ed.2d 379.

Despite the long history and the persistent durability of the state action limitation, appellants contend that under Section 5 of the Fourteenth Amendment, Congress has the power to punish all conspiracies to violate Fourteenth Amendment rights, with or without state action. They rely for this proposition on *United States* v. *Guest*, *supra*.

Guest involved a criminal prosecution under 18 U.S.C.A. § 241,[9] and not under 42 U.S.C.A. § 1985 (3).[10] A majority of the Court, concurring in the opinion of

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[9] 18 U.S.C.A. § 241.

> If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or
>
> If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—
>
> They shall be fined not more than $5,000 or imprisoned not more than ten years, or both.

[10] 18 U.S.C.A. § 241 and 42 U.S.C.A. § 1985(3) are closely analogous, and one has been called the criminal "counterpart" of the other. *Baldwin* v. *Morgan*, 5 Cir. 1958 251 F.2d 780, 790. However, the *precise* criminal analogue of the first several clauses in § 1985 (3) was R. S. § 5519, originally part of Section 2 of the Act of April 20, 1871, 17 Stat. 13, 14. It was declared unconstitutional in *United States* v. *Harris*, 1883, 106 U.S. 629, 27 L.Ed. 290. See *Hardyman* v. *Collins*, 9 Cir. 1950, 183 F.2d 308, 317 (dissenting opinion).

Mr. Justice Stewart, reaffirmed the Court's position that the equal protection clause of the Fourteenth Amendment does not reach wrongs done by one or more private individuals against another. 383 U.S. at 755. The Court nonetheless concluded that dismissal of the indictments against private persons was improper because there had been some state involvement in the conspiracy.

Appellants point out that six of the Justices in *Guest* subscribed to the view that Section 5 of the Fourteenth Amendment empowers Congress to enact legislation affecting purely private conduct. They emphasize that the legislative history and the language of § 1985 (3) indicate that Congress not only intended to assert its full power under the Constitution when it enacted the Civil Rights Acts,[11] see *United States* v. *Price*, 1966, 383 U.S. 787, 800, 86 S.Ct. 1152, 16 L.Ed.2d 267, 276, 280-287; *United States* v. *Mosley*, 238 U.S. 383, 387-388, 35 S.Ct. 904, 59 L.Ed. 1355, 1357; Virginia Commission on Constitutional Government, *The Reconstruction Amendments, Debates* (1967), pp. 484-570, but also clearly intended that § 1985 (3) reach private conspiracies. Cong. Globe, 42nd Cong., 1st Sess., 505-506 (1871); Cong. Globe, 42nd Cong., 1st Sess., 481-484.

While we do not gainsay the persuasiveness of this argument, and certainly do not disparage the prognostications of numerous commentators who read in *Guest* the eventual demise of the state action requirement,[12]

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[11] While *Price* and *Mosley* deal with § 241, and not § 1985(3), all indications in the legislative history of the Ku Klux Klan Act suggest that the two sections are to be viewed synopitcally. See Cong. Globe, 42nd Cong. 1st Sess., App. at 69.

[12] Frantz, *Federal Power to Protect Civil Rights: The Price and Guest Cases*, 4 L. in Trans. Q.63, 69-73 (1967); Note, *Fourteenth Amendment Congressional Power To Legislate Against Private Discriminations: The Guest Case*, 52 Cornell L. Q. 586, 599 (1967); Avins, *The Civil Rights Act* of 1875 and The Civil Rights Cases Revisited: *State Action, The Fourteenth Amendment and Housing*, 14 U.C.L.A.L. Rev. 5 (1966); Note, *Congressional Power Under Section 5 of the Fourteenth Amendment May Extend to Punishment of Private Conspiracies to Interfere With The Equal Enforcement of State-Owned Public Facilities*, 45 Tex. L. Rev. 168 (1966); Note, *Civil Rights—Federal Criminal Code Protects*

we cannot subscribe to the view that *Guest* has fulfilled this promised potential. This court does not write on a clean slate. We are compelled to note that most if not all courts which have considered *Guest* since its appearance in 1966 have hewed closely to the majority opinion by Justice Stewart and to the majority's findings of state action. *Jones* v. *Alfred H. Mayer Co.*, 8 Cir. 1967, 379 F.2d 33, 43, *reversed on other grounds;* 392 U.S. 409, 88 S.Ct. ——, 20 L.Ed.2d 1189; *United States* v. *Lester*, 6 Cir. 1966, 363 F.2d 68, 72, *cert. denied*, 385 U.S. 1002, 87 S.Ct. 705, 17 L.Ed.2d 542; *O'Hara* v. *Mattix*, W.D. Mich. 1966, 255 F.Supp. 540, 542; *St. Augustine High School* v. *Louisiana High School Athletic Association*, E.D.La. 1967, 270 F.Supp. 767, 771-772, *aff'd.*, 5 Cir. 1968, 396 F.2d 224. This court has been no exception. *Wilkins* v. *United States*, 5 Cir. 1967, 376 F.2d 552, 570, *cert. denied*, 389 U.S. 964, 88 S.Ct. 342, 19 L.Ed.2d 379. At this late date we cannot give *Guest* a new and novel interpretation. Guided as we are by decisions of other courts, bound as we are by *Wilkins*, and recognizing that *Guest* on its merits does not abolish state action,[13] we are constrained to hold that § 1985 (3) does not reach private conspiracies to interfere with Fourteenth Amendment rights. *Hoffman* v. *Halden, supra; Huey* v. *Barloga, supra.* In so holding we recognize that the citadel of state action is under heavy attack, but we reluctantly concede that as yet it has not fallen.

We are not deterred or persuaded otherwise by the recent Supreme Court case of *Jones* v. *Alfred H. Mayer & Co., supra.* The *Mayer* case is authoritative only as to the constitutionality of a statute, 42 U.S.C.A. § 1982,

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Rights Secured by Fourteenth Amendments, 20 Vand. L. Rev. 170 (1966); Silard, *A Constitutional Forecast: Demise of the "State Action" Limit on the Equal Protection Guarantee*, 66 Col. L. Rev. 855 (1966).

[13] Since we therefore deal here only with the bare terms of the Equal Protection Clause itself, nothing said in this opinion goes to the question of what kinds of other and broader legislation Congress might constitutionally enact under §5 of the Fourteenth Amendment to implement that clause or any other provision of the Amendment." 383 U.S. at 754-755.

enacted pursuant to the Thirteenth and not the Fourteenth Amendment. While *Mayer* is certainly illustrative of the importance of Section 2 of the Thirteenth Amendment as a source of Congressional power,[14] it is not dispositive of the proposition that Congress, under Section 5 of the Fourteenth Amendment, may reach private conduct. Such an important and significant extension of the Fourteenth Amendment, though intimated in several recent Supreme Court decisions,[15] must still await a specific and authoritative pronouncement by that Court.

We feel compelled to add that appellants' failure to state a cause of action under § 1985 (3) is impeded by more than just limitations on the extent of Congressional power under the Fourteenth Amendment. While some of appellants' claims are of Fourteenth Amendment derivation, others such as the right to petition the government for redress of grievances, *cf. United States* v. *Cruikshank*, 1876, 92 U.S. 542, 552-553, 23 L.Ed. 588; *Powe* v. *United States*, 5 Cir. 1940, 109 F.2d 147, *cert. denied*, 309 U.S. 679, 60 S.Ct. 717, 84 L.Ed. 1023; *Wilkins* v. *United States*, 5 Cir. 1967, 376 F.2d 552, and the right to interstate travel and the use of streets and highways in interstate commerce,[16] *United States* v.

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[14] We do not pass upon whether § 1985(3) can be justified as reaching private conduct if read as an exercise of Congressional power under the Thirteenth Amendment, *cf. United States* v. *Harris*, 106 U.S. at 641, or whether *racially* motivated assaults may be considered "badges of slavery." *Cf. Jones* v. *Alfred H. Mayer Co.*, 20 L.Ed.2d at 1207.

[15] *United States* v. *Guest, supra; Katzenbach* v. *Morgan*, 1966, 384 U.S. 641, 86 S.Ct. 1717, 16 L.Ed.2d 828; *Heart of Atlanta Motel* v. *United States*, 1964, 379 U.S. 241, 280, 292, 85 S.Ct. 348 13 L.Ed.2d 258, 281, 288; *Katzenbach* v. *McClung*, 1964, 379 U.S. 294, 305, 85 S.Ct. 377, 13 L.Ed.2d 290, 299.

[16] Compare the complaint in the case, *sub judice:*

> "By their conspiracy and acts pursuant thereto, the defendants have wilfully and maliciously, . . . prevented the minor plaintiffs and their parents, . . . from enjoying and exercising . . . their rights to travel the public highways without restraint in the same terms as white citizens in Kemper County, Mississippi, . . .,"

[Footnote continued on page 35]

Guest, 383 U.S. at 757-760, and 757, n. 13, are attributes of national citizenship not sourced in the Fourteenth Amendment.[17] Unlike appellants' other claims, these rights are "fundamental to the concept of our Federal Union," 383 U.S. at 757, and implicit in our form of republican government.[18] It is well established that Congress has the power to legislate for their protection even

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[16] [Continued]

with the third paragraph of the indictment in *United States* v. *Guest*, 383 U.S. 745, 757, n. 13:

> ". . . the defendants conspired to injure, oppress, threaten, and intimidate Negro citizens of the United States in the free exercise and enjoyment of:
>
> > 'The right to the full and equal use on the same terms as white citizens of the public streets and highways in the vicinity of Athens, Georgia.' " 383 U.S. at 757, n. 13.

[17] With reference to the right to travel, the Supreme Court said in a very significant footnote in *United States* v. *Guest*:

> "As emphasized in Mr. Justice Harlan's separate opinion, § 241 protects only against interference with rights secured by other federal laws or by the Constitution itself. *The right to interstate travel is a right that the Constitution itself guarantees*, as the cases cited in the text make clear. Although these cases in fact involved governmental interference with the right of free interstate travel, their reasoning fully supports the conclusion that the constitutional right of interstate travel is *a right secured against interference from any source whatever, whether governmental or private*. In this connection, it is important to reiterate that the right to travel freely from State to State finds constitutional protection that is quite *independent of the Fourteenth Amendment*." (emphasis added) 383 U.S. at 759, n. 17.

[18] "The right of the people peaceably to assemble for the purpose of petitioning Congress for a redress of grievances, or for anything else connected with the powers or the duties of the National Government, is an attribute of national citizenship and, as such, under the protection of any guarantied [sic] by, the United States. The very idea of a government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for a redress of grievances." *United States* v. *Cruikshank*, 92 U.S. at 552.

against interference by private conduct.[19] Under these circumstances it is clear that appellants' failure to state a cause of action under § 1985 (3) for violation of rights of national citizenship must derive from reasons other than constitutional limitations.

Turning to § 1985 (3) itself and the cases which have construed it, we find that rights of national citizenship remain unredressed (when impaired by private conduct), not for want of Congressional power, but for want of a proper statutory vehicle to express it. The Supreme Court has instructed us that § 1985 (3) does not have the statutory equipage for redress of private conspiracies. In *Collins* v. *Hardyman*, *supra*, the court held that § 1985 (3) reached only conspiracies under color of law. The Court was probably led to this result by its doubts as to the constitutionality of the statute, yet it based its decision not on constitutional grounds, but upon a construction of the language of the statute itself.

Collins involved the disruption of a political meeting in Los Angeles County, California, that has been called in order to petition Congress in opposition to the Marshall Plan. The Democratic Club that called the meeting had been organized for the purpose of participating in the election of officers of the United States and for the purpose of engaging in public discussions on issues of national importance. In their complaint, plaintiffs alleged that they had been deprived of equal protection of the laws and privileges and immunities under the laws in that, among other deprivations, they had been denied their right to petition the government for redress of grievances.

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[19] *Ex Parte Yarbrough*, 110 U.S. 651, 4 S.Ct. 152, 28 L.Ed. 274 (1884); *Guinn* v. *United States*, 238 U.S. 347, 35 S.Ct. 926, 59 L.Ed. 1340 (1915); *In Re Quarles*, 158 U.S. 532, 15 S.Ct. 959, 39 L.Ed. 1080 (1895); *Motes* v. *United States*, 178 U.S. 458, 20 S.Ct. 993, 44 L.Ed. 1150 (1900); *United States* v. *Waddell*, 112 U.S. 76, 5 S.Ct. 35, 28 L.Ed. 673 (1884); *Logan* v. *United States*, 144 U.S. 263, 12 S.Ct. 617, 36 L.Ed. 429 (1892). See also, Feuerstein, *Civil Rights Crimes and the Federal Power to Punish Private Individuals for Interference with Federally Secured Rights*, 19 Vand. L. Rev. 641, 651-665 (1966).

The district court dismissed the complaint holding that the statute did not afford redress for invasion of civil rights at the hands of individuals. 80 F.Supp. 501. In reversing, the Court of Appeals relied on that part of § 1985 (3) which provides damages for overt acts "whereby another is . . . deprived of having and exercising any right or privilege of a citizen of the United States." *Hardyman* v. *Collins*, 9 Cir. 1950, 183 F.2d 308, 314. The Court of Appeals also relied on the long line of cases developed under § 241:

> "The delineation by the courts of the narrow area of rights which Congress has constitutional power to protect from individual invasion has developed through the application of what is now 18 U.S.C.A. § 241, originally enacted May 31, 1870. This statute has been applied to individual deprivations of the right to vote for federal offices, Ex parte Yarborough, 1884, 110 U.S. 651, 4 S.Ct. 152, 28 L.Ed. 274; the right to enjoy the privileges granted by the homestead laws, United States v. Waddell, 1884, 112 U.S. 76, 5 S.Ct. 35, 28 L.Ed. 673; the right to protection from attack while in the custody of a federal marshal, Logan v. United States, 1892, 144 U.S. 263, 12 S.Ct. 617, 36 L.Ed. 429; and the right to inform federal officers of violations of federal law, In re Quarles, 1895, 158 U.S. 532, 15 S.Ct. 959, 39 L.Ed. 1080; Motes v. United States, 1900, 178 U.S. 458, 20 S.Ct. 993, 44 L.Ed. 1150. The cases also indicate by way of dictum that the right to assemble for the purpose of discussing the policies of the federal Government and petitioning that Government for redress of grievances is within the scope of direct federal protection." 183 F.2d at 313

On the basis of these precedents, the Court of Appeals reinstated the plaintiffs' complaint. *Accord*, *Robeson* v. *Fanelli*, S.D.N.Y. 1950, 94 F.Supp. 62. It distinguished the case of *United States* v. *Harris*, 1883, 106 U.S. 629, 27 L.Ed. 290, in which the criminal counterpart of § 1985 (3) was declared unconstitutional, on the grounds that the portion of § 1985 (3) which dealt with the rights of

national citizens was clearly severable from the rest of the statute and was therefore insulated from constitutional infirmity.

The Supreme Court, in *Collins*, reversed the Court of Appeals and dismissed the complaint, taking the position that the statute was not severable. Nonetheless it avoided the constitutional challenge raised by *Harris* and argued that privileges and immunities *under the laws* and equal protection *of the laws* required that there be "some manipulation of the law or its agencies." 341 U.S. at 661. Without state involvement, the Court viewed appellants' claims as "no more a deprivation of 'equal protection' or of 'equal privileges and immunities' than it would be . . . to assault one neighbor without assaulting them all, or libel some persons without mentioning others." *Id.* The Court found that appellants' "rights *under the laws* and to protection *of the laws* remained untouched and equal to the rights of every other Californian. . . ." *Id.* The Court concluded:

> "We say nothing of the power of Congress to authorize such civil actions as respondents have commenced or otherwise to redress such grievances as they assert. We think that Congress has not, in the narrow class of conspiracies defined by this statute, included the conspiracy charged here. We therefore reach no constitutional questions." 341 U.S. at 662.

This decision in *Collins*, because it is based on the language of § 1985 (3), and not upon any considerations of Congressional power, is unaffected by any of the opinions in *Guest*, or by the opinion in *Mayer*. We are therefore bound to follow it until it is expressly overruled. We have serious doubts as to its continued vitality,[20]

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[20] See Comment, *Civil Actions for Damages Under the Federal Civil Rights Statutes*, 45 Tex. L. Rev. 1015, 1018-1019:

> "The plain language of the statute and the circumstances surrounding its passage in 1871 indicate a congressional intent to protect the described civil rights *against* all private conspiracies. Nevertheless, in *Collins* v. *Hardyman*, the Supreme Court read the section restrictively and imposed a requirement, as with section 1983, that the prohibited conduct be action under

but we, as an inferior court, cannot expand the statutory girth of § 1985 (3) when we are ". . . faced with a limiting Supreme Court decision which, so far as we are told directly, remains good law." *Jones* v. *Alfred H. Mayer Co.*, 379 F.2d at 43.

We conclude by noting that § 1985 (3) is today a poor remnant of its original conception. Its criminal counterpart has been held unconstitutional, *United States* v. *Harris*, *supra*, and its own constitutionality cast in doubt. Its language has been greatly restricted, *Collins* v. *Hardyman*, *supra*, and its application is no longer in accord with its legislative history. The last is probably the most mystifying. § 241 and § 1985 (3) have the same Reconstruction historicity.[21] They both speak of men going in disguise on the public highway and they both lack the language "under color of law" which appears so clearly in § 1983.[22] Every indication in the legislative history of the period suggests that the Congressional reconstructionists intended to make the streets and highways safe for the lately freed from private as well as

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color of state law. The majority noted that the fourteenth amendment prohibits only certain state action and that this statute, like section 1983, was founded exclusively upon that amendment. Under the Court's interpretation, the only effective difference between the two sections is that one deals with individual action while the other deals with conspiracies. Recent Supreme Court decisions involving the federal criminal statute analogous to section 1985 raise some doubts about the reasoning of the *Collins* case, however, and seem to presage adoption of a more unrestricted interpretation of section 1985."

[21] See footnote 20.

[22] 42 U.S.C.A. § 1983.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. R.S. § 1979.

from public traducers.[23] As said by Justice Frankfurter in *United States* v. *Williams*, 1951, 341 U.S. 70, 76, 95 L.Ed. 758, 763-764, decided during the same term as Collins:

> "Men who 'go in disguise upon the public highway, or upon the premises of another' are not likely to be acting in official capacities. The history of the times—the lawless activities of private bands, of which the Klan was the most conspicuous—explains why Congress dealt with both State disregard of the new constitutional prohibitions and private lawlessness. The sponsor of § 6 [now § 241] in the Senate made explicit that the purpose of his amendment was to control private conduct." 341 U.S. at 76.

We are puzzled as to why this statement pertaining to the legislative history of § 241 is not equally applicable to § 1985 (3). Nor can we discern why "privileges and immunities under the laws" do not include privileges and immunities of national citizenship.[24] Judge Healy,

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[23] Id., 45 Tex. L. Rev. at 1019, n. 27:

> "Congressman Pool, the sponsor of the federal criminal statute from which much of the language of § 1985 was taken, said of his measure in 1870:
>
> > But, sir, individuals may prevent the exercise of the right of suffrage; individuals may prevent the enjoyment of other rights which are conferred upon the citizen by the fourteenth amendment, as well as trespass upon the right conferred by the fifteenth.
> >
> > Not only citizens, but organizations of citizens, conspiracies, may be and are, as we are told, in some of the States formed for that purpose. . . . I cannot see that it would be possible for appropriate legislation to be restored to except as applicable to individuals who violate or attempt to violate these provisions. . . . It matters not whether these individuals be officers or whether they are acting upon their own responsibility. . . .
>
> Cong. Globe, 41st Cong., 2d Sess. 3611, 3613 (1870)."

[24] ". . . the right to travel thus has respectable precedent to support its status as a privilege and immunity of national citizenship. . ."
United States v. *Guest*, 383 U.S. at 766 (dissenting opinion).

dissenting in the Court of Appeals in *Collins*, was of the view that "privileges and immunities under the laws" was derivative from the Fourteenth Amendment and therefore limited the statute only to Fourteenth Amendment rights. His theory was that the similarity of the language used in § 1985 (3) to "the wording of Section 1 of the Fourteenth Amendment shows that Congress, in choosing its language, was thinking of that Amendment and its vindication." 183 F.2d at 315.

This view is somewhat inconsistent with recent Supreme Court pronouncements on § 241. As noted in *United States* v. *Price*, quoting from Justice Holmes in *United States* v. *Mosley*:

> "The source of this section [§ 241] in the doings of the Klu Klux and the like is obvious and acts of violence obviously were in the mind of Congress. Naturally Congress put forth *all its powers* . . ." (emphasis added)

Justices Burton, Black and Douglas expressed the same view of § 1985 (3) in their dissenting opinion in *Collins*. Theirs was the position that Congress had the power, *quite independent of the Fourteenth Amendment*,[25] to create a federal cause of action for the abridgment of federally protected rights. Moreover, they took the position that Congress had actually done so in § 1985 (3):

> "Congress certainly has the power to create a federal cause of action in favor of persons injured by private individuals through the abridgment of federally created constitutional rights. It seems to me that Congress has done just this in RS § 1980 (3) [1985 (3)]. This is not inconsistent with the principle underlying the Fourteenth Amendment. That Amendment prohibits the respective states from making laws abridging the privileges or immunities of citizens of the United States or denying to any person within the jurisdiction of the state the equal protection of the laws. Cases holding that those

[25] See footnote 17 *supra*.

clauses are directed only at state action are not authority for the contention that Congress may not pass laws supporting rights which exist apart from the Fourteenth Amendment." 341 U.S. at 664.

The solicitude recently shown by the Supreme Court in *United States* v. *Guest, supra,* for the protection of the right to travel as a "privilege and immunity of national citizenship," 383 U.S. at 766, raises some doubts as to the continued vitality of *Collins.*[26] Even more recently the Court has disapproved the practice of reading civil rights legislation more restrictively than either the history or the language of the statutes require:

> "As we said in a somewhat different setting two Terms ago, 'we think that history leaves no doubt that, if we are to give [the law] the scope that its origins dictate, we must accord it a sweep as broad as its language.' United States v. Price, 383 U.S. 787, 801, 16 L.Ed.2d 267, 276, 86 S.Ct. 1152. 'We are not at liberty to seek ingenious analytical instruments,' ibid., to carve from § 1982 an exception for private conduct—even though its application to such conduct in the present context is without established precedent." *Jones* v. *Mayer Co.*, —— U.S.

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[26] See footnote, 20, *supra.* See also Note. *Federal Criminal Code Protects Rights Secured by Fourteenth Amendment,* 20 Vand. L. Rev. 170, 176:

> "A third immediate implication of the instant case [*Guest*], without reference to the separate opinions, is its possible effect upon application of the civil counterpart to section 241, which gives a victim of civil rights violations a cause of action for damages against the violator. Since this civil provision is similar in wording to section 241, its development has closely paralleled that of its criminal counterpart. In fact, the courts seem to consider holdings in both the criminal prosecutions and the civil actions when deciding either type of case. This practice has led to considerable confusion in the civil cases, where, for example, violations of equal protection rights give rise to a cause of action while denials of due process do not. If this parallelism in the interpretation of the civil and criminal sections continues, it would follow that the victim of any rights violation would now have a cause of action against the violator."

In view of these recent changes, it would not surprise us if *Collins* v. *Hardyman* were disapproved and if § 1985 (3) were held to embrace private conspiracies to interfere with rights of national citizenship.[27] In the context of voting rights the statute has already been so applied.[28] See *Paynes* v. *Lee*, 5 Cir. 1967, 377 F.2d 61. And where Congress has regulated in the area of interstate transportation, the statute has likewise been invoked. *Baldwin* v. *Morgan*, 5 Cir. 1958, 251 F.2d 780, 791. For many years § 241 has been applied to private conspiracies against rights of national citizenship,[29] and why § 1985

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[27] See the opinion of Mr. Justice Brennen in *United States* v. *Guest, supra*, where the *dissenting* opinion in *Collins* v. *Hardyman* is cited. 383 U.S. at 779.

[28] *Paynes* v. *Lee*, 5 Cir. 1967, 377 F.2d 61, was based upon the statutory specificity of § 1985(3) with reference to the right to vote:

> "* * * or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy * * *"

This section of the statute was not limited by the decision in *Collins:* 341 U.S. at 660. We distinguished *Collins* by saying:

> "The denial of a Federal remedy against persons not acting under color of state law is only in cases where the asserted right stems from the Fourteenth Amendment and the claim is for damages resulting from an abridgment of privileges or immunities or a denial of equal protection of the laws. Such was the case of Collins v. Hardyman, supra. Such was the case in Wallach v. Cannon, 8 Cir. 1966, 357 F.2d 557, and in Shemaitis v. Froemke, 7 Cir. 1951, 189 F.2d 963. The Fourteenth Amendment is only a protection against the encroachment upon enumerated rights by or with the sanction of the State. The interference with a federally protected right to vote is something more and something different. Moreover it has had the specific attention of Congress which has provided a specific remedy for interference by private individuals." 337 F.2d a 63-64.

[29] See footnote 19, *supra*.

(3) should be given a narrower compass when its constitutionality would be no further impaired [30] or its language further abused has mystified the commentators.[31] Nonetheless, *Collins* clearly denied redress for private interference with rights of national citizenship when it overruled the judgment of the Court of Appeals. Since we may not adopt what the Supreme Court has expressly rejected, we obediently abide the mandate in *Collins*.

The judgment of the district court in dismissing the complaint is

AFFIRMED.

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[30] The court in *Collins* limited § 1985(3) to state action in part to avoid the constitutional complications discussed in Harris. It is not clear why this limitation had to be extended to rights *not* derivative from the Fourteenth Amendment, particularly when the court in construing § 241 has required state action only for Fourteenth Amendment rights.

[31] Note, *Collins* v. *Hardyman: More on the Civil Rights Act*, 46 Ill. L.Rev. 931, 936:

> "The Supreme Court has repeatedly upheld the constitutionality of the criminal sanctions of the Civil Rights Act and included within the area of its protection the right to vote for federal officers, the right to enjoy the privileges granted by the homestead laws of the United States, the right to protection from attack while in the custody of a federal marshal, and the right to inform federal officers of a violation of federal law. In these cases the Court did not require, as a prerequisite to federal protection, that the individuals charged must have acted under color or sanction of state law. Neither did they inquire as to the availability of remedial action under state law. Why then should the Court make such limitations under the civil sanctions of civil rights legislation? Under the decision of *Connally* v. *General Construction Company*, there is no distinction between the power of Congress to declare given conduct a crime and the ability to give a person injured by such conduct an action for damages."

See also, Note, *Civil Rights—Federal Civil Rights Act* § 47(3) *Permits Civil Action Only Against Persons Acting Under Color of State Law*, 100 U.Pa.L.Rev. 121.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

OCTOBER TERM, 1968

No. 25799

D. C. Docket No. 1417—Civil Action

EUGENE GRIFFIN, a minor, by his next friend and father, ROOSEVELT GRIFFIN, ET AL., APPELLANTS

versus

LAVON BRECKENRIDGE, ET AL., APPELLEES

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

Before GOLDBERG and AINSWORTH, Circuit Judges,
and SPEARS, District Judge

JUDGMENT—April 29, 1969

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Mississippi, and was argued by counsel for appellants, and taken under submission by the Court upon the record & briefs on file for appellees;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered that appellants pay to appellees the costs on appeal to be taxed by the Clerk of this Court. Issued as Mandate: May 22, 1969

SUPREME COURT OF THE UNITED STATES

No. 380 Misc., October Term, 1969

EUGENE GRIFFIN, ETC., ET AL., PETITIONERS

v.

LAVON BRECKENRIDGE, ET AL.

On petition for writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 1517 and placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

May 4, 1970

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